



CROSS-AGENCY TRANSITION TEAM WHITE PAPER

SUBJECT: Subscriptions for Publications

Issue

The NASA FY 2010 Appropriations Bill provides that NASA's Cross-Agency Support Funds (CASX) are limited to a one-year period of availability and will expire on September 30, 2010. This paper addresses the requirements for subscriptions for publications.

Current appropriations, including one year appropriations and other appropriations expiring at the end of the current fiscal year, may be used to purchase subscriptions to publications even if the subscriptions extend past the end of the fiscal year. This includes multi-year subscriptions, which may be ordered and fully funded with the current year's appropriations. Ordinarily, for subscriptions funded with expiring funds, the subscription period must begin during this fiscal year. However, if it is necessary to avoid a lapse in access to a publication for which the agency has a continuing need—for example, a subscription that expires on September 30—expiring funds may be used to fund a subscription that begins after the start of the new fiscal year. This guidance applies to subscriptions for publications that are printed or recorded in any way, whether for auditory or visual use, including subscriptions to computerized research databases.

Guidance

Federal law authorizes agencies to make advance payments for "charges for a publication printed or recorded in any way for the auditory or visual use of the agency." 31 U.S.C. §3324(d)(2). This advance payment authority impacts the way the bona fide needs rule applies to subscriptions for publications. If a payment can be made in advance, it follows that the obligation against which that payment is made can similarly be made in advance. The Comptroller General long ago concluded that the advance payment statute¹ authorizes multiyear contracts for periodicals, and that the statute authorizes obligating the whole cost of the subscription against the appropriation for the fiscal year in which the contract becomes effective. 23 Comp. Gen. 326 (1943); 24 Comp. Gen. 163 (1944).

A more recent Comptroller General opinion found that subscriptions for access to electronic research database services are covered by the statute authorizing advance payments for publications, and that they generally should be funded with appropriations available for obligation when the subscriptions begin. Comp. Gen. Dec. B-309530 (Sept. 17, 2007). The

¹ In the 1943 and 1944 cases, the Comptroller General was construing an earlier version of the advance payment statute. The current statute version of the statute (31 U.S.C. §3324(d)(2)) does not use the term "periodical" but the broader term "publication."

Comptroller General found that using FY 2006 funds in September to renew subscriptions to database services that expired on October 31, 2006 violated the bona fide needs rule. *Id.* However, the opinion concluded that the agency could use expiring funds in September to renew necessary subscriptions that were expiring at the end of September (i.e., renewals taking effect on October 1), because that was necessary to avoid a lapse in service. *Id.*

These Comptroller General decisions² reflect a reasonable construction of the advance payments statute and the bona fide needs rule, and are consistent with NASA's interpretation.

² The U.S. Department of Justice has determined that "the opinions and legal interpretations of the Comptroller General on appropriations matters, although useful sources on appropriations matters, are not binding upon departments and agencies of the executive branch." Memorandum for Emily C. Hewitt, General Counsel, GSA, from Richard L. Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, August 11, 1997.